

General Information Letter: An employer maintaining a place of business in Illinois is required to withhold income tax from compensation paid in this State.

August 12, 1999

Dear:

This is in response to your letter dated July 14, 1999 in which you state the following:

Please be advised of the following situation in which I find myself, and which I know to be jeopardizing my job and my financial security:

- 1) On March 15, 1999 I went to work as a full-time employee of xxxx xxxxxxxx xxxxxxxxxx, with headquarters in xxxxxxxxxxxxxxxxxxxxxxxx.
- 2) I was hired out of the regional office of xxxx xxxxxxxx xxxxxxxxxx located in xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.
- 3) I was hired as a Systems engineer to work in the State of Illinois (xxxxxxx, specifically) to represent xxxx in support of a product and service sold to a xxxx client located in xxxxxxxx, Illinois. The client is xxxxxxxx xxxxxxxxxx.
- 4) From March 15, 1999 through May 9, 1999 I traveled each week to the xxxx regional office in xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx for training and employee orientation. The training and orientation was a planned program for myself and several other new employees hired for other geographic areas in various capacities.
- 5) May 9, 1999 marked the completion of my training in xxxxxxxxxxxxxxxx and the commencement of my representation of xxxx as a Systems Engineer to xxxxxx client, xxxxxx xxxxxxxxxxxxxxxx, located in xxxxxxxx, Illinois.
- 6) From the first payroll period to the present, xxxx xxxxxxxx xxxxxxxxxx has refused to pay the state income tax withholding deducted from my gross pay to the State of Illinois, in which I have resided for at least the last 30 years and in which I continue to reside at this time. Instead, they have WITHOUT MY CONSENT, paid the deducted tax to the State of xxxxxxxxxxxxxxxx.
- 7) xxxxx xxxxxxxx xxxxxxxxxx is continuing to steadfastly refuse to correct this situation, in spite of my many protests from me.
- 8) xxxx xxxxxxxx xxxxxxxxxx has also not paid to the State of Illinois the legally required tax/insurance premium to the State of Illinois for Workers Compensation Insurance and Illinois Unemployment Compensation Insurance!
- 9) Management of xxxx xxxxxxxx xxxxxxxxxx have made statements to me and warned me that my pursuing my concerns about this situation would jeopardize the security of my holding onto my job or employment with xxxx.

- 10) I have never at any time authorized xxxx to withhold ANY of my earnings to be paid to the State of xxxxxxxxxxxxxx, nor any other state, except the State of Illinois.

My concerns:

1. I am quite alarmed about my potential liability for those taxes (and any penalties or interest)) due as a result of my employer's actions regarding this employment/payroll/tax situation.
2. My eligibility for Workers' Compensation Insurance, should I become injured on the job or while performing my employment duties, is a void.
3. My eligibility for Unemployment Insurance, should I become involuntarily separated from my employment from xxxx, is also a void.
4. Potential threats of retaliation (based on both blatant and implied "warnings" from regional management) if I pursue these matters with headquarters in xxxxxxxxxxxxxxxxxxxxxxxxxx, in an effort to "help" get this situation rectified so that my tax and insurance are in compliance with Illinois law, as well as for my own protection.

Some History:

In order to assume my part of the responsibility for getting these taxes paid to the State of Illinois, I called the Illinois Department of Revenue in March, 1999 and briefly explained this situation, whereupon they advised me as to the steps that xxxx needed to take, and mailed me the packet with the forms and information which would be needed.

The reason I did this was because I was told by the Regional General Manager/Human Resources Director, as well as the Technical Services Manager that "this is the way we do it, and it is very complex, and you may just have to wait till the end of the year and get it straightened out yourself with the taxes." When I again requested that the taxes be correctly appropriated, I was told "I told you, it's very complex, and they're trying to figure out how to do it."

When I AGAIN spoke with them, this time my supervisor, I was told that they still hadn't been able to figure out how to straighten it out, and I would just have to be patient. So I figured since the liability and jeopardy is mine, I'd better do all I can to "help" them figure it out.

When I took the information and the packet to Human Resources, they would not TAKE the packet, and refused to hear the information which I had gotten from the Illinois Department of Revenue. They said "Just wait till the end of the year and get it straightened out. You shouldn't interfere with the way xxxxxxxxxxxxxx does things."

After being advised by the Illinois Department of Revenue of my potential jeopardy, I was fully aware of the risky situation I have been put in, so I

again asked the Regional General Manager/Human Resources Director what exactly had to be done, could I help? I said that I would be glad to call the xxxxxxxxxxxxxxxxxxxxxxxx headquarters directly in order to help expedite this matter, and was told emphatically and quickly "Oh, I wouldn't do that, not if you value your job. Just leave it alone. They'll (xxxx) do what they want to do, and they're gonna do it THEIR way, and there's nothing you can do to change that unless you really want to lose your job".

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). For your convenience, we enclose a copy of 2 Ill.Adm.Code §1200 explaining these two types of rulings issued by the Department.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics and are not binding on the Department.

With respect to your first concern regarding the potential Illinois income tax liability (and penalties and interest), please note that the Illinois Income Tax Act ("IITA") imposes a tax measured by net income on individuals for the privilege of earning or receiving income in or as a resident of Illinois. Accordingly, the ultimate responsibility for payment of the Illinois income tax rests on you. Please see the enclosed copy of Section 201(a).

You are correct in that every employer maintaining an office or transacting business within Illinois is required to withhold income tax on compensation paid in this State if federal withholding is also required on such compensation pursuant to Section 701(a) of the IITA. Section 706 of IITA provides that if an employer fails to deduct and withhold Illinois income tax, and the amount required to be deducted and withheld is paid, the tax shall not be collected from the employer. However, the employer shall not be relieved from liability for penalties and interest as indicated in Section 1002(d) of the IITA.

In summary, you are responsible for the payment of Illinois income tax based on your net income, but penalties and interest for failure to withhold such payments from your wages may be assessed against your employer. Your letter has been referred to the Bureau of Central Registration for a review of your employer's account and to determine whether the above described penalties and interest are applicable. Enclosed please find copies of Sections 701(a), 706 and 1002(d) of the IITA.

Your other concerns, specifically 2) workers' compensation insurance, 3) unemployment insurance, and 4) potential threats of retaliation by your employer, are all matters that need to be addressed elsewhere. For example, the workers' compensation insurance matter should be taken to the Illinois Industrial Commission. Their legal office address is 100 West Randolph, Suite 8-272, Chicago, IL 60601-3275. Questions regarding unemployment insurance are best answered by the Department of Employment Security located at 401 S. State Street, Floor 6, Chicago, IL 60605-1289. An attorney that specializes in employment and labor relations would have answers concerning your questions of potential threats of retaliation by your current employer.

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As stated above, this is a general information letter. This letter does not constitute a statement of policy that applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax